

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JENNY HWANG,

Plaintiff,

-against-

JOANNA CZECH DALLAS, LLC,

Defendant.

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Appearances:

For Plaintiff:

MARS KHAIMOV, ESQ.
Mars Khaimov Law, PLLC
100 Duffy Ave., Suite 510
Hicksville, NY 11801

For Defendant:

DANIEL J. PETERS
Law Office of Daniel J. Peters, PLLC
6440 N. Central Expressway
Suite 618
Dallas, TX 75206

BLOCK, Senior District Judge:

Plaintiff Jenny Hwang (“Plaintiff”) filed a complaint against Defendant Joanna Czech Dallas, LLC (“Defendant”), alleging violations of the Americans with Disabilities Act. On October 19, 2023, Plaintiff filed a notice of settlement indicating that the parties had reached a settlement in principle. In response, Magistrate Judge Pollak ordered the parties to file a stipulation of dismissal by November 3, 2023. No such stipulation was filed, so Magistrate Judge Pollak issued a scheduling order stating that if the parties did not file a stipulation of dismissal or a status report by November 14, 2023, the court would hold a status conference on November 15, 2023. The parties again failed to comply with the

order and neither showed up at the status conference.

On November 16, 2023, Magistrate Judge Pollak issued a *sua sponte* Report and Recommendation (“R&R”) recommending that the Court require Plaintiff to file a stipulation of dismissal by November 20, 2023, and impose a monetary fine of \$25 for each day of noncompliance if that deadline was not met. The R&R gave the parties fourteen days to file objections and warned that “[f]ailure to file objections within the specified time waives the right to appeal the District Court’s order.” R&R at 2. No objections have been filed.

If clear notice has been given of the consequences of failing to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (“Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” (citations omitted)). The Court will, however, excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

No error, plain or otherwise, appears on the face of the R&R. Accordingly, the Court adopts the R&R without *de novo* review with the modification that

Plaintiff shall have until December 16, 2023, to file a stipulation of dismissal. In addition, Plaintiff's counsel, Mr. Mars Khaimov, shall pay to the Court a sanction equal to \$25 times the number of days between December 1, 2023 (the expiration date for objections to the R&R) and the filing of the stipulation of dismissal. The Clerk of the Court shall not accept the stipulation of dismissal unless it is accompanied by full payment of the sanction.

If Plaintiff has not filed a stipulation of dismissal and paid the sanction by December 16, 2023, the Court will deem the case abandoned and enter judgment dismissing it with prejudice for failure to prosecute and imposing a sanction of \$400 on Plaintiff's counsel.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
December 6, 2023